

Appendix A
Waukegan Coke Plant Superfund Site
Consent Decree
RD Administrative Order on Consent

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V**

IN THE MATTER OF:

**Waukegan Coke Plant Site
Waukegan, Illinois**

RESPONDENTS:

**Elgin, Joliet & Eastern Railway Company
General Motors Corporation,
North Shore Gas Company, and
Outboard Marine Corporation
Larsen Marine Service, Inc.**

ADMINISTRATIVE ORDER

**ON CONSENT FOR REMEDIAL
DESIGN AT THE WAUKEGAN
COKE PLANT**

WAUKEGAN, ILLINOIS

U.S. EPA DOCKET NO.

V-W- '01 -C-651

**Proceeding under Sections
104, 106(a) and 122
of the Comprehensive
Environmental Response,
Compensation and
Liability Act of 1980,
as amended.**

**ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL DESIGN AT THE WAUKEGAN
COKE PLANT SITE, WAUKEGAN, ILLINOIS**

The United States Environmental Protection Agency ("U.S. EPA") and the Respondents have agreed to the making and entry of this Administrative Order on Consent ("Consent Order").

I. JURISDICTION

A. U.S. EPA and the Respondents, Elgin, Joliet & Eastern Railway Company, General Motors Corporation, North Shore Gas Company, Larsen Marine Service, Inc., and Outboard Marine Corporation ("the parties") enter into this Order. The Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a), and 9622. This authority has been delegated to the

Administrator of U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

B. The parties to this Consent Order agree to undertake all actions required by the terms and conditions hereof and the parties consent to, and will not contest or legally challenge the validity of this Consent Order or its terms, or U.S. EPA's authority or jurisdiction to issue or enforce this Consent Order.

C. The parties' consent to enter into this Consent Order shall not constitute an admission by the parties of any legal or factual matter or opinions set forth herein. By agreeing to perform the work described in the Scope of Work, Attachment II to this Consent Order, Respondents do not admit any liability under CERCLA or any other applicable law, rule or regulation with regard to releases or threatened releases of hazardous substances at the Waukegan Coke Plant Site (the "Site") in Waukegan, Illinois.

D. This Consent Order shall be inadmissible, pursuant to Rule 407 or 408 of the Federal Rules of Evidence, in any action or proceeding for purposes of establishing liability or fault as to any party. This Consent Order shall be admissible only in actions or proceedings in which the obligations of the parties under this Consent Order are in issue.

II. NOTICE OF ADMINISTRATIVE ACTION

A. The U.S. EPA has notified the Elgin, Joliet & Eastern Railway Company, General Motors Corporation, Larsen Marine Service, Inc., North Shore Gas Company, and Outboard Marine Corporation that they are persons whom it considers to be potentially responsible parties

("PRPs") of this administrative action and provided each PRP with the names and addresses of the PRPs.

B. U.S. EPA has notified the Federal Natural Resource Trustee, which is the U.S. Department of the Interior, of the negotiations in this action pursuant to the requirements of Section 122(j) of CERCLA. U.S. EPA has notified, pursuant to Section 104(b) of CERCLA, the State Natural Resource Trustees, which are the Illinois Department of Natural Resources and the Illinois Environmental Protection Agency ("IEPA").

III. PARTIES BOUND

A. This Consent Order applies to and binds the following persons as defined in Section 101(21) of CERCLA:

- (1) U.S. EPA, through the authority delegated to the Director of the Superfund Division, Region 5;
- (2) The following persons as defined in Section 101(21) of CERCLA, herein referred to as the Performing Respondents, who are bound by all obligations set forth in this Consent Order:

Elgin, Joliet & Eastern Railway Company

General Motors Corporation

North Shore Gas Company

- (3) Larsen Marine Services, and Outboard Marine Corporation are persons as defined in Section 101(21) of CERCLA, and Owner Respondents herein whose obligation under this Consent Order is to provide access at the Site property under their control and cooperate with the Performing Respondents in performance of the Work.

(4) The successors and assignees of the Owner Respondents and Performing Respondents.

B. The undersigned representatives of the U.S. EPA and the Respondents each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind the party he or she represents to this document.

C. The Performing Respondents shall be jointly and severally responsible for carrying out all actions required of the Performing Respondents by the terms and conditions of this Consent Order.

D. No change in ownership, corporate structure, or partnership status shall in any way alter the status or responsibility of the Respondents under this Consent Order. Until the termination of this Order under Section XXVIII (Termination and Satisfaction), the Respondents shall provide copies of this Consent Order to any and all subsequent owners or successors prior to any transfer of substantial ownership rights through the sale of stock, assets, or other indicia of ownership.

E. The Performing Respondents shall be responsible for requiring that all officers, directors, agents, employees, principals, contractors, consultants, firms, and other persons or entities acting under or on behalf of the Performing Respondents with respect to all matters herein comply with the terms of this Consent Order. Further, the Performing Respondents shall provide copies of this Consent Order to all contractors and consultants retained to perform any Work under this Consent Order within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever date is later.

F. U.S. EPA shall be responsible for requiring that its respective personnel, contractors, firms, consultants, and other persons acting under or on behalf of U.S. EPA, comply with the terms of this Consent Order.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Consent Order or in the documents attached to this Consent Order or incorporated by reference into this Order, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S. C. § 9601 et seq.

B. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

C. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

D. "Owner Respondents" shall mean Outboard Marine Corporation and Larsen Marine Services, Inc.

E. "Paragraph" shall mean a portion of this Consent Order identified by a capital letter and includes one or more subparagraphs.

F. "Performing Respondents" shall mean Elgin, Joliet & Eastern Railway Company, General Motors Corporation, and North Shore Gas Company.

G. "Pilot Project AOC" shall mean that Administrative Order On Consent for Pre-Remedial Design Pilot Study at the Waukegan Coke Plant Site, Waukegan, Illinois, #V-W-01-C-26 and entered into on December 8, 2000.

H. "Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Site, signed on September 30, 1999, by the Superfund Division Director, U.S. EPA, Region 5, and all attachments thereto. The ROD is a part of this Consent Order, and is included as Attachment I.

I. "Remedial Design Work Plan" or "RD Work Plan" shall mean the plan setting forth the schedule and tasks required to complete the Remedial Design for the Remedial Action required by the ROD, as described in Section II of the Scope of Work, which is Attachment II to this Consent Order.

J. "Respondents" shall mean Elgin, Joliet & Eastern Railway Company, General Motors Corporation, Larsen Marine Service, Inc., North Shore Gas Company, and Outboard Marine Corporation.

K. "Response Costs" shall mean all costs incurred by U.S. EPA and IEPA with regard to the Site, including oversight costs. "Past Response Costs" shall mean all costs that U.S. EPA and IEPA have incurred with regard to the Site prior to and including the effective date of this Order. All costs incurred pursuant to this Consent Order subsequent to the signature date of this Consent Order shall be considered Response Costs reimbursable under Section XXIII, below.

L. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

M. "Section 106 Administrative Record" shall mean the Administrative Record, which includes all documents considered or relied upon by U.S. EPA in preparation of this Consent

Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record, and is included as part of the Record of Decision.

N. "Site" shall mean the Waukegan Coke Plant Site, which the U.S. EPA has identified as Operable Unit 2 of the Outboard Marine Corporation Superfund Site, encompassing approximately 36 acres, located in Waukegan, Illinois on a peninsula separating Waukegan Harbor on the west from Lake Michigan on the east. See ROD, Attachment 1 at page 1. In addition, the Site includes the area encompassing the extent of contamination and area formerly used in the manufactured gas and coking operations.

O. "Work" with respect to Performing Respondents shall mean all activities Respondents are required to perform under this Consent Order, as described in the Scope of Work, Attachment II to this Consent Order, and including any Work as defined in the Pilot Project AOC that remains uncompleted as of the effective date of this Consent Order. "Work" with respect to the Owner Respondents shall be limited to providing access to the Site for purposes of completion of the Remedial Design.

V. STATEMENT OF PURPOSE

A. The objective of this Consent Order and the mutual objectives of U.S. EPA and the Respondents in entering into this Consent Order is for Performing Respondents to complete the Remedial Design phase of the selected Remedial Action, consistent with the ROD as set forth in the Scope of Work, Attachment II to the Consent Order and for Owner Respondents to provide access to their property and to cooperate with the Performing Respondents in completing the Work pursuant to the Consent Order.

B. The activities conducted pursuant to this Consent Order are subject to approval by U.S. EPA as provided herein, shall employ sound scientific engineering and construction

practices and shall be consistent with CERCLA, the NCP, and applicable state laws and regulations.

VI. FINDINGS OF FACT AND DETERMINATIONS

Based upon information available on the effective date of this Consent Order, the Director of the Superfund Division, Region 5, makes the following determinations:

A. The City of Waukegan Water Treatment Plant is located on the peninsula, south of the Site. The emergency drinking water intake pipe is located approximately 2000 feet from the Water Plant. The main drinking water intake pipe is approximately one mile from the Water Plant into Lake Michigan.

B. The Elgin, Joliet and Eastern Railway Company ("EJ&E") purchased the Site in 1893, had trackage on the Site and leased 4.53 acres on the western portion of the Site to a creosote wood-treating plant in 1908. The creosote plant was dismantled sometime in or after 1917. From approximately 1929 through 1971, various owners operated a by-product coke oven plant ("Plant") to produce gas and coke. North Shore Gas Company ("North Shore") owned the site from 1927 to 1947. North Shore constructed, operated and maintained the Plant. General Motors ("GM"), or its subsidiaries, owned the Site from 1947 to 1972. GM operated and modified the Plant, and dismantled certain structures on the Site. In 1972 Outboard Marine Corporation ("OMC") purchased part of the Site, dismantled the remaining plant structures, except for an office building. In 1991 Larsen Marine Service, Inc. acquired a portion of the Site from OMC through a transaction(s) in which OMC acquired property owned by Larsen Marine Service, Inc. The exchange of property facilitated OMC's construction of the remedial action for Operable Unit 1 of the OMC Superfund Site. Outboard Marine Corporation and Larsen Marine Service, Inc. are present owners of portions of the Site.

C. As a result of field investigations at the Site for a construction project, soil and groundwater contamination were discovered. The Record of Decision ("ROD") concluded that certain soils on the Site are contaminated with coal tar and arsenic from past gas and coke manufacturing processes and creosote from past wood treating processes. Contaminants in soils include polynuclear aromatic hydrocarbons (PAHs), phenols, and volatile aromatics, and PAH compounds in soils range from 0 to 25,750 ppm. Phenols have been detected in groundwater at concentrations from 0 to 296 ppm. The presence of PAH compounds in the soils and phenols in the groundwater constitutes a release.

D. The United States, the State of Illinois and North Shore Gas Company entered into an Administrative Order on Consent on September 27, 1990 for the completion of a Remedial Investigation and Feasibility Study (RI/FS).

E. The analytical data developed during the RI revealed the presence of "hazardous substances", as defined in Section 101(14) of CERCLA, at the Site.

F. On September 30, 1999, the Superfund Division Director signed the Record of Decision ("ROD") for the Site. The ROD embodies the selected cleanup alternative for the Site and is made part of this Consent Order as Attachment I.

G. On May 24, 2000, the Respondents (excluding Larsen Marine Service, Inc.) submitted a Final Work Plan for the collection of data for pre-remedial design pilot testing for remediation of groundwater contamination. U.S. EPA approved the Final Work Plan, which was incorporated into the December 8, 2000 Administrative Order on Consent for Pre-Remedial Design Pilot Study. The pilot test work was substantially completed on February 28, 2001.

H. The Site is a "facility" as defined in Section 101(9) of CERCLA.

I. "Hazardous substances," as defined in Section 101(14) of CERCLA, have been deposited, stored, disposed of, placed, or otherwise located at the Site.

J. Each Respondent is a "person" as defined in Section 101(21) of CERCLA.

K. The presence of hazardous substances at the Site or the past, present or future migration of hazardous substances currently located at or emanating from the Site constitutes a "release" or substantial threat of "release," as defined in Section 101(22) of CERCLA.

L. Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in the September 30, 1999 ROD, may present an imminent and substantial endangerment to the public health, welfare and the environment.

M. The actions required by this Consent Order are in the public interest and are consistent with CERCLA and the NCP.

VII. WORK TO BE PERFORMED

A. All work to be performed by the Performing Respondents pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or certified geologist. Prior to the initiation of work at the Site, the Performing Respondents shall notify the U.S. EPA in writing of the name, title, and qualifications of the proposed engineer or geologist, and of the names of principal contractors and/or subcontractors proposed to be used in carrying out the work to be performed pursuant to this Consent Order. U.S. EPA reserves the right to disapprove the selected contractor. The Performing Respondents reserve the right to replace the engineer, geologist, contractor and/or subcontractor for cause, except that any such replacement shall be subject to the notice and approval requirements of this paragraph and shall not be cause for delay of performance of work required by this Consent Order.

B. Attachment II to this Consent Order provides the Scope of Work that is the subject of this Consent Order, including any uncompleted parts of the Pilot Project SOW, which is incorporated into and made a part of the SOW, Attachment II, hereto.

C. Performing Respondents shall perform the Work as set forth in the Scope of Work according to the schedule set forth in the Scope of Work. All work shall be conducted in accordance with the NCP, applicable Remedial Design guidance and the requirements of this Consent Order, including the standards, specifications and schedule contained in the Scope of Work.

D. Performing Respondents agree to complete any Work required pursuant to the Pilot Project AOC that remains uncompleted as of the effective date of this Consent Order.

VIII. REVIEW OF SUBMISSIONS

A. After review of any plan, report or other item which Performing Respondents must submit for approval pursuant to this Consent Order, U.S. EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Performing Respondents modify the submission and explain the reason for the modifications; or (e) any combination of the above.

B. In the event of approval, approval upon conditions, or modification by U.S. EPA, Performing Respondents shall take any action required by the plan, report, or other item, as approved or modified by U.S. EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by U.S. EPA. In the event that U.S. EPA modifies the Performing Respondents'

submission to cure the deficiencies and the second submission still has a material defect, U.S. EPA retains its right to seek stipulated penalties, as provided in Section XVII.

C. Upon receipt of a notice of disapproval, Performing Respondents shall, within 14 days or such other time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVII, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect.

D. Notwithstanding the receipt of a notice of disapproval, Performing Respondents shall take, at the direction of U.S. EPA, any action required by any non-deficient portion of the submission unless it is impractical to proceed on the non-deficient portion due to its interrelationship with the portion of the submission which was not approved. Implementation of any non-deficient portion of a submission shall not relieve Performing Respondents of any liability for stipulated penalties under Section XVII (Stipulated Penalties).

E. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by U.S. EPA, U.S. EPA may again require the Performing Respondents to correct the deficiencies, in accordance with the preceding paragraphs. U.S. EPA also retains the right to amend or develop the plan, report or other item. Performing Respondents shall implement any such plan, report, or item as amended or developed by U.S. EPA, subject only to their right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

F. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, Performing Respondents shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Performing Respondents invoke the

dispute resolution procedures set forth in Section XVIII (Dispute Resolution) and U.S. EPA's action is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

G. All plans, reports, and other items that Performing Respondent must submit to U.S. EPA under this Consent Order shall, upon approval or modification by U.S. EPA, be enforceable under this Consent Order. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item submitted to U.S. EPA under this Consent Order, the approved or modified portion shall be enforceable under this Consent Order.

IX. ADDRESSES FOR ALL CORRESPONDENCE

Documents, including reports, approvals, disapprovals, and other correspondences to be submitted pursuant to this Consent Order shall be sent by certified mail, overnight courier or personal delivery to the following addresses, or to such other addresses or addressees as the Respondents or U.S. EPA may hereafter designate in writing:

A. One copy (or such other number as the U.S. EPA RPM may designate) of all draft documents and two copies of all final, approved documents to be submitted to the U.S. EPA must be sent to:

Kevin Adler
U.S. Environmental Protection Agency
77 West Jackson Boulevard (SR-6J)
Chicago, Illinois 60604

In addition, two copies of all documents to be submitted to the U.S. EPA should be sent to any oversight contractor identified to the Respondents by the U.S. EPA Remedial Project Manager.

B. One copy of all documents to be submitted to the the U.S. EPA must also be sent to the Illinois Environmental Protection Agency ("IEPA") at the following address:

Illinois Environmental Protection Agency
Bureau of Land
NPL Unit
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Attn: Gerald Willman

Documents to be submitted to the Respondents should be sent to the attention of:

Steering Committee for the Waukegan Coke Plant Site
(See Distribution List, Attachment III to this Consent Order)

X. ADDITIONAL WORK

A. In the event that the U. S. EPA determines that additional work, not specified in but consistent with the Scope of Work, is necessary to accomplish the objectives of the remedial design and is not inconsistent with the NCP, U.S. EPA shall so notify the Respondents in writing.

B. Performing Respondents shall complete any such additional work determined to be necessary by U.S. EPA in accordance with the standards and specifications required by U.S. EPA. Performing Respondents shall propose and submit a Work Plan for the additional work and provide a schedule for the additional work to U.S. EPA for approval. U.S. EPA will consult with the Performing Respondents regarding the proposed schedule, but reserves the right to set a schedule for the additional work.

XI. COMPLIANCE WITH APPLICABLE LAWS

All Work undertaken by the Performing Respondents pursuant to this Consent Order shall be performed in compliance with CERCLA and the NCP, and all applicable federal, state, and local laws, ordinances, and regulations. In the event of a conflict in the application of federal, state, or local laws, ordinances and regulations, the Performing Respondents shall comply with the more/most stringent such law, ordinance, or regulation, unless provided otherwise in writing by U.S. EPA. The Performing Respondents shall be responsible for obtaining all necessary State of Illinois and/or local permits which are necessary for the performance of any off-Site work hereunder. The standards and provisions of Section XVI describing Timeliness of Performance shall govern delays in obtaining permits required for the Work and also the denial of any such permits, provided that Performing Respondents have timely applied for any such permits and have submitted all information required therefor. All Work not affected by the permitting delay shall proceed according to the approved schedule.

XII. ACCESS

A. Performing Respondents are hereby designated as authorized representatives of U.S. EPA for the purpose of performing the Work required under this Consent Order. The Performing Respondents shall use their best efforts to obtain access agreements from all parties owning or leasing property, other than Owner Respondents, to which Performing Respondents may need access in order to implement the RD Work Plan for the Scope of Work within thirty (30) days of its approval. The Respondents' best efforts shall include, when necessary, the proffer of reasonable compensation to any such parties who are not PRPs at the Site under CERCLA. In the event that such access agreements are not obtained within the time referenced above, the Performing Respondents shall so notify U.S. EPA in writing. U.S. EPA may, as it deems

appropriate, assist Performing Respondents in obtaining access to the Site. Performing Respondents shall reimburse the U.S. EPA, in accordance with the procedures in Section XXIII (Reimbursement of Costs), for all of the costs incurred by the U.S. EPA in obtaining such access. U.S. EPA reserves the right to terminate this Consent Order, perform a complete or partial Remedial Design and seek reimbursement from the Performing Respondents should the Performing Respondents' inability to gain access to the Site or other areas materially affect the Performing Respondents' ability to perform all of the Work required herein.

B. Authorized representatives of U.S. EPA shall be allowed access at reasonable times to the Site, and to other areas where Work is to be performed hereunder, by the Performing Respondents, for purposes including, but not limited to: inspecting records, operating logs and contracts related to the Site; reviewing the progress of the Performing Respondents in carrying out the terms of this Consent Order; conducting such tests, inspections, and sampling as U.S. EPA may deem necessary; using a camera, sound or video recording, or other documentary type equipment; and verifying the data submitted to U.S. EPA by the Performing Respondents pursuant to this Consent Order. The Performing Respondents shall permit such authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Consent Order, subject to Paragraph C of Section XIV of this Consent Order (Sampling and Data/Document Availability) regarding confidentiality. All persons with access to the Site pursuant to this Consent Order shall comply with the revised Health and Safety Plan prepared by the Performing Respondents.

C. Nothing herein shall be construed as restricting the inspection or access authority of U.S. EPA under any applicable law, permit or regulation.

D. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Order, is owned or controlled by any of the Respondents, such Respondent shall:

a. Commencing on the effective date of this Consent Order, provide the United States, the State, and Performing Respondents and their representatives, including U.S. EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Order including, but not limited to, the following activities:

- (1) Monitoring the Work;**
- (2) Verifying any data or information submitted to the United States or the State;**
- (3) Conducting investigations relating to the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work;**
- (4) Obtaining samples;**
- (5) Assessing the need for, planning, or implementing additional response actions at the Site;**

(6) Implementing the Work pursuant to the conditions set forth in this Consent Order;

(7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Performing Respondents or their agents;

(8) Assessing Respondents compliance with this Consent Order; and

(9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Order;

b. Commencing on the effective date of this Consent Order, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Order and the ROD.

XIII. PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, the Performing Respondents shall designate a Project Coordinator ("PC") who shall have the primary responsibility for overseeing preparation of the Final Work Plan. The U.S. EPA shall designate a Remedial Project Manager ("RPM") responsible for overseeing the implementation of the Work. The RPM shall serve as the designated representatives at the Site for U.S. EPA. To the maximum extent

possible, communications between the Performing Respondents, and U.S. EPA, and all documents, reports, approvals and other correspondences concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the PC and RPM.

B. The U.S. EPA and the Performing Respondents shall have the right to change their respective RPM or PC. Such a change shall be accomplished by notifying the other addressees (see Section IX) in writing. To the extent possible, such notification shall occur at least ten (10) days prior to the change.

C. The RPM shall have all authorities vested in an On-Scene Coordinator and a Remedial Project Manager (OSC, RPM) by the NCP. The RPM shall have the authority to halt, conduct or direct any Work required by this Consent Order or take any response action when conditions at the Site may present an imminent and substantial endangerment to human health, welfare or the environment. Performing Respondents or their agents shall immediately notify the RPM upon becoming aware of any conditions at the Site which may present an imminent and substantial endangerment to human health or welfare of the environment. If the RPM halts Work pursuant to this section, the schedule described in the Scope of Work and this Consent Order shall be extended as necessary to reflect the delay associated with the order to halt work.

D. The absence of the RPM from the Site shall not be cause for stoppage of Work.

E. The Project Coordinator or contract designee for the Performing Respondents shall be on-site during all hours of Work at the Site and shall be on call throughout the pendency of this Consent Order.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Performing Respondents shall make the results of all sampling, tests, and other data generated by or on behalf of the Performing Respondents pursuant to implementation of this Consent Order available to U.S. EPA, and shall submit these results in written monthly progress reports, as required by Section VII of this Consent Order (Work to be Performed). U.S. EPA shall make the results of all sampling, tests, and other data generated by or on behalf of U.S. EPA pursuant to this Consent Order available to the Performing Respondents, except sample results generated pursuant to a criminal investigation.

B. At the request of U.S. EPA or its contractors, the Performing Respondents shall provide the requester with split or duplicate samples of any samples collected by the Performing Respondents pursuant to this Consent Order. The RD Work Plan generated by the Performing Respondents in accordance with the Scope of Work will specify the necessary period for Performing Respondents to allow U.S. EPA to request split or duplicate samples and shall also be the document which notifies U.S. EPA of all sample collection activity. U.S. EPA will notify Performing Respondents of any request for sampling consistent with the requirements of the Scope of Work. U.S. EPA agrees that it will provide split or duplicate samples to the Performing Respondents, except for such samples taken pursuant to a criminal investigation.

C. Pursuant to applicable federal laws and regulations (Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. Part 2), the Performing Respondents may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to the terms of this Consent Order. Such an assertion must be adequately substantiated when the assertion is made. Analytical data and other information described in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Performing Respondents. Information

determined to be confidential by the U.S. EPA in accordance with applicable federal laws and regulations will be afforded the full protection provided by such laws and regulations. If no confidentiality claim accompanies information when it is submitted to U.S. EPA, or if information claimed as confidential is determined by U.S. EPA not to be confidential, and an appeal of such determination is not made or is unsuccessful, the information may be made available to the public by U.S. EPA.

D. The Performing Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Performing Respondents assert such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following:

- (1) The date of the document, record, or information;
- (2) The name and title of the author of the document, record, or information;
- (3) The name and title of each addressee and recipient;
- (4) A description of the title and contents of the document, record, information; and
- (5) The privilege asserted by the Performing Respondents.

However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Order may be withheld on the basis of privilege.

XV. QUALITY ASSURANCE

A. The Performing Respondents shall use, to the extent practicable, the Quality Assurance Project Plan (QAPP) that was used in performing the Remedial Investigation/Feasibility Study (RI/FS) and/or the pre-remedial design pilot study results.

B. The QAPP shall be subject to review, modification, and approval by U.S. EPA in accordance with the procedures for review set forth in Section VIII.

C. The Performing Respondents shall consult with the RPM in planning for, and prior to, all sampling and analysis detailed in the RD Work Plan. In order to provide quality assurance and maintain quality control with respect to all samples collected pursuant to this Consent Order, the Performing Respondents shall:

(1) Ensure that the U.S. EPA and/or authorized representatives are allowed access at reasonable times to any laboratories and are permitted to talk with personnel utilized by the Performing Respondents for analyses;

(2) Ensure that U.S. EPA and/or authorized representatives are allowed access at reasonable times to any laboratory's documents or files relating to analytical work for the Site, whether in paper, electronic or other format. Such documents and files shall include, without limitation, information relating to sample receipts, custody, instrument maintenance or calibration and analytical data, notes, reports or other documentation of any analytical work.

(3) Ensure that all sampling and analyses are performed according to U.S. EPA methods or other methods deemed satisfactory by the U.S. EPA and are performed in accordance with the Quality Assurance Project Plan; and,

(4) Ensure that any laboratories utilized by the Performing Respondents for analyses participate in a documented U.S. EPA Quality Assurance/Quality Control program equivalent to that followed by the U.S. EPA and consistent with U.S. EPA guidance. As part of such a program, and upon request by the U.S. EPA, such laboratories will perform analyses of samples provided by the U.S. EPA to demonstrate the quality of analytical data for each such laboratory.

XVI. TIMELINESS OF PERFORMANCE

The Performing Respondents shall cause all Work required under this Consent Order and Attachments to be performed within the time limits set forth in this Consent Order and Attachments or modifications, or the time limit set forth in a written approval or determination of Additional Work pursuant to Section X.

A. "Force majeure," for purposes of this Consent Order, is defined as any event arising from causes beyond the control of the Performing Respondents or any entity controlled by Performing Respondents, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Order despite Performing Respondents' best efforts to fulfill the obligation. The requirement that the Performing Respondents exercise "best efforts to fulfill the obligation" includes using due diligence to anticipate force majeure events and to address the effects of any force majeure event (1) as it is occurring and (2) following the event, so the length of the delay is minimized. Neither an increase in costs, Performing Respondents' inability to pay costs, nor failure of a contractor to perform constitutes a force majeure event.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Performing Respondents shall notify the RPM by telephone within three days of when Performing Respondents first knew or should have known that the event would cause a delay. Within ten (10) working days after such notice, Performing Respondents shall provide a written explanation to U.S. EPA describing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Performing

Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Performing Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Performing Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Supplemental documentation may be provided when available. Failure to comply with the above requirements shall preclude Performing Respondents from asserting any claim of force majeure for that event. Performing Respondents shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

C. If U.S. EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Order that are affected by the force majeure event will be extended by U.S. EPA in writing for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify the Performing Respondents in writing of their decision.

D. If the Performing Respondents elect to invoke the dispute resolution procedures set forth in Section XVIII, they shall do so no later than fifteen (15) days after receipt of U.S. EPA's notice. In any such proceeding, Performing Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the

effects of the delay, and that Performing Respondents complied with the requirements described above. If Performing Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Performing Respondents of the affected obligation of this Consent Order.

XVII. STIPULATED PENALTIES

A. Performing Respondents shall be liable for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Order specified below, unless excused under Section XVI (Timeliness of Performance). "Compliance" by Performing Respondents shall include completion of the activities under this Consent Order or any work plan or other plan approved under this Consent Order identified below in accordance with all applicable requirements of law, this Consent Order, and any plans or other documents approved by U.S. EPA pursuant to this Consent Order and within the specified time schedules established by and approved under this Consent Order.

B. The following stipulated penalties shall be payable per violation per day for any noncompliance identified in Subparagraph 1, below:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--|--------------------------------|
| \$250 | UP TO 30 DAYS |
| \$1000 | 31 TO 60 DAYS |
| \$2000 | OVER 60 DAYS |

1. Failure to adequately perform and/or timely complete the following:
 - i. Completion of RD Work Plan
 - ii. Completion of QAPP/Sampling Plan
 - iii. Completion of Work as described in the RD Work Plan

C. The following stipulated penalties shall be payable per violation per day for failure to (1) submit timely or adequate reports pursuant to this Consent Order; (2) comply with notice or other requirements of Sections VII, VIII, X, XII of this Consent Order, and (3) comply with any other requirement of this Consent Order:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--|--------------------------------|
| \$200 | UP TO 30 DAYS |
| \$400 | 31 TO 60 DAYS |
| \$500 | OVER 60 DAYS |

D. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

E. Following U.S. EPA's determination that Performing Respondents have failed to comply with a requirement of this Consent Order, U.S. EPA may give Performing Respondents written notification of the same and describe the noncompliance. U.S. EPA may send the Performing Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding paragraph regardless of whether U.S. EPA has notified the Performing Respondents of a violation.

F. All penalties owed under this section shall be due and payable within 60 days of Performing Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless Performing Respondents invoke the Dispute Resolution procedures under Section XVIII (Dispute Resolution).

G. All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall reference identification number: 05JB. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to U.S. EPA as provided in Section IX (Addresses For All Correspondence).

H. The payment of penalties shall not alter in any way Performing Respondents' obligation to complete the performance of the Work required under this Consent Order.

I. Penalties shall continue to accrue as provided in Paragraph E. during any dispute resolution period. If the dispute is resolved by agreement or by a decision of U.S. EPA, accrued penalties determined to be owing shall be paid to U.S. EPA within 15 days of the agreement or the receipt of U.S. EPA's decision.

J. If Performing Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as interest. Performing Respondents shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph E. at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

K. Nothing in this Consent Order shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Performing Respondents' violation of this Consent Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

L. Notwithstanding the above provisions, Performing Respondents shall have the right to petition U.S. EPA for a reduction or waiver of stipulated penalties that accrue during dispute resolution for items upon which they did not prevail. Such petition shall be based on evidence

(1) that the delay in work or other violation that caused the stipulated penalty to accrue was necessary and appropriate during the dispute resolution proceeding; (2) that Performing Respondents' position regarding the dispute had substantial support in law and fact and reasonably could have been expected to prevail considering the applicable standard of review; and (3) that Respondent sought dispute resolution expeditiously and took all other appropriate steps to avoid delay in remedial action work as a result of the dispute. U.S. EPA may grant a reduction or waiver in stipulated penalties that accrued during the dispute resolution period as it deems appropriate, in its sole and unreviewable discretion. Any determination by U.S. EPA under this paragraph is not subject to the dispute resolution provisions under Section XVIII of this Consent Order or otherwise subject to judicial review. Until receipt of written notification from U.S. EPA stating the disposition of Performing Respondents' petition, Performing Respondents shall place any stipulated penalties as they accrue (at least every 60 days) in an interest bearing account. The total amount of these funds that is not reduced or waived by U.S. EPA under this paragraph shall be due and payable to U.S. EPA within 15 days after written notice that such amount is due and payable.

M. No payments made under this Section shall be tax deductible for federal tax purposes.

XVIII. DISPUTE RESOLUTION

A. The opportunity to invoke the dispute resolution provisions of this Section will be available to Performing Respondents unless otherwise expressly stated by a provision of this Consent Order. The Performing Respondents and U.S. EPA shall use their best efforts to resolve all disputes or differences of opinion arising in connection with this Consent Order informally and

in good faith. The informal resolution of any dispute in connection with this Consent Order must be in writing and signed by U.S. EPA and Performing Respondents.

B. If a dispute arises in connection with this Consent Order that U.S. EPA and the Performing Respondents are unable to resolve informally, Performing Respondents may institute formal dispute resolution in accordance with the following procedures:

(1) If, after twenty (20) days, informal negotiations have not resolved the dispute, the Performing Respondents shall present a written notice of such dispute by certified mail, overnight courier or personal delivery, to the other Parties. Such notice shall set forth the specific points of dispute, the position of the Performing Respondents and the technical basis therefor, and any actions which the Performing Respondents consider necessary to resolve the dispute;

(2) Within ten (10) days of receipt of such a written notice, U.S. EPA shall provide a written response to the Performing Respondents setting forth its position and the basis therefor. During the ten (10) days following receipt of the response, the Parties shall attempt to negotiate, in good faith, a resolution of their differences; and

(3) An administrative record of the dispute shall be maintained by U.S. EPA and shall contain the notice of dispute and the response, including all supporting documentation, submitted to U.S. EPA. Where appropriate, U.S. EPA may allow the Performing Respondents to submit supplemental statements of position. The administrative record shall be available for inspection by all Parties; and,

(4) Following the expiration of the time periods described in Subparagraph (2) above, if U.S. EPA concurs with the position of the Performing Respondents, U.S. EPA shall so notify the Performing Respondents in writing and the Parties shall modify this Consent Order pursuant to Section XXVII to include any necessary extensions of time or variances of Work. If

U.S. EPA does not concur with the position of the Performing Respondents, the Superfund Division Director, Region 5, shall resolve the dispute, based upon the administrative record and consistent with the terms and objectives of this Consent Order, and shall provide written notification of such resolution to the Performing Respondents.

C. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of Work and/or obligations to be performed under this Consent Order.

D. Upon written resolution of any dispute, whether informally or using the procedures in this Section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure and into this Consent Order. The Performing Respondents shall proceed with all remaining Work according to the modified plan or procedure and this Consent Order.

XIX. RECORD PRESERVATION

The Performing Respondents shall preserve, during the pendency of this Consent Order, and for a minimum of five (5) years after termination of this Consent Order, all records and documents in the possession of the Performing Respondents, or in the possession of any division, employees, agents, accountants, contractors, or attorneys of the Respondents, which concern implementation of the groundwater pilot study or otherwise concern implementation of this Consent Order, despite any document retention policy to the contrary. After this five-year period, the Respondents shall notify U.S. EPA in writing within sixty (60) days prior to destruction or disposal of any such documents. Upon request of U.S. EPA, the Respondents shall make available to U.S. EPA all or any such records, or copies of all or any such records, subject to Paragraph C of Section XIV of this Consent Order (Sampling and Data/Document Availability).

XX. WAIVER OF CLAIMS

A. The Respondents hereby waive any claims or demands for compensation or payment under Sections 106, 111 and 112 of CERCLA against U.S. EPA, the United States or the Hazardous Substances Superfund established by Section 9507 of Title 26 of the United States Code for or arising out of any activity performed or expenses incurred pursuant to this Consent Order; provided, however, that Respondents do not waive any rights which they may have or hereafter acquire to assert a claim pursuant to Section 106(b)(2)(D) of CERCLA, 42 U.S.C. § 9606(b)(2)(D), to recover the costs of any Work required by U.S. EPA that exceeds the Work required to accomplish the objectives of this Consent Order.

B. This Consent Order does not constitute, and shall not be construed to constitute, approval or certification of response costs for purposes of Section 111(a)(2) of CERCLA.

XXI. COVENANTS NOT TO SUE

A. Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XXVIII (Termination and Satisfaction), U.S. EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform the Work agreed to in this Order, except as otherwise reserved herein.

B. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order. The Respondents also agree not to assert any claims under Section 106(b) for costs incurred in implementing this Consent Order.

XXII. RESERVATION OF RIGHTS AND CONTRIBUTION PROTECTION

A. Except as provided in Section XXI (Covenants Not to Sue), U.S. EPA reserves all rights and defenses that it may have pursuant to any available legal authority.

B. Except as otherwise provided, the Respondents specifically reserve all rights and defenses that they may have individually or collectively and the right to contest any determinations, findings of fact, or conclusions of law set forth in this Consent Order in any proceeding regarding the Site, other than actions brought by U.S. EPA to enforce this Consent Order.

C. Nothing herein shall waive the right of U.S. EPA to enforce this Consent Order, or to take action on matters not addressed in this Consent Order pursuant to Sections 104, 106(a) and 107 of CERCLA or any other available legal authority. Except as provided in Section XXI (Covenant Not to Sue), the U.S. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages. In addition, U.S. EPA reserves its right to undertake any Remedial Design work, and/or any removal, remedial and/or response actions relating to the Site, and to seek recovery from the Respondents, for any and all costs incurred in undertaking such actions, if Respondents fail to complete said Work in a satisfactory manner.

D. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the Parties may have against any person not a party to this Consent Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous wastes, contaminants, or pollutants at, to, or from the Site. The Parties to this Consent Order expressly reserve all rights, claims, demands, and causes

of action they may have against any and all persons who are not parties to this Consent Order. Nothing herein is intended to affect any rights, claims, demands or causes of action that the Respondents may have among themselves, and the Respondents expressly reserve all such rights, claims, demands, and causes of action.

E. U.S. EPA recognizes that the Respondents may have the right to seek contribution, indemnity and/or any other available legal or equitable remedies against any person not a party to this Consent Order, who is responsible or liable for any amounts that have been or will be expended by the Respondents in connection with the Site, or against any Respondent to this Consent Order who does not fulfill its obligations with regard to this Consent Order.

F. With regard to claims for contribution against Respondents by any person not a party to this Consent Order for matters addressed in this Consent Order or the Pilot Project AOC, the Parties hereto agree that the Respondents are entitled to protection from such contribution actions or claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2). Notwithstanding any such protections against contribution actions or claims by non-parties, the Respondents agree that they may allocate or re-allocate any and all response costs among Performing Respondents, including, but not limited to, any and all response costs, as defined in CERCLA, incurred (a) pursuant to the Administrative Order on Consent for the completion of the Remedial Investigation and Feasibility Study (RI/FS) entered into with North Shore Gas Company on September 27, 1990, (b) under the December 8, 2000 Administrative Order on consent for Pre-Remedial Design Pilot Study, (c) under this Consent Order, and (d) in the future with respect to the Site, among themselves, either consensually or through civil actions.

G. Nothing herein shall be construed to release the Respondents from any liability for failure of the Respondents to prepare the Remedial Design as described in the Scope of Work in accordance with this Consent Order. The Parties further recognize that, except as otherwise expressly provided, this Consent Order and the successful completion and approval of the Remedial Design do not represent satisfaction, waiver, release, or covenant not to sue, of any claim of U.S. EPA or the United States against the Respondents relating to the Site, including, but not limited to, claims to require Respondents to undertake further response actions, claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA, and claims for damages to natural resources under Section 107 of CERCLA; provided, however, that upon receipt of written notice of satisfaction as provided in Section XXVIII (Termination and Satisfaction) of this Consent Order, Respondents shall have no further obligations under this Consent Order other than record preservation under Section XIX.

H. Nothing contained herein is intended to release or settle any claim for personal injury or property damage by any person not a party to this Consent Order against the Respondents.

I. U.S. EPA reserves its rights to bring an action against any person not a party to this Consent Order pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or other available legal authority for recovery of costs incurred in oversight of this Consent Order, or for recovery of any response costs, including, but not limited to, all indirect costs, incurred in connection with investigation, access, or other response actions at the Site. Nothing in this Consent Order shall be construed as a waiver of any right U.S. EPA may have to seek reimbursement of any response costs, including, but not limited to, all indirect costs, from any person not a party to this Order.

J. U.S. EPA reserves its rights to bring an action against Respondents or any other parties pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or other available legal authority, for recovery of any costs, including, but not limited to, all indirect costs, incurred in oversight of this Consent Order which are not paid pursuant to Section XXIII (Reimbursement of Oversight Costs) and any other costs, including, but not limited to, all indirect costs, incurred by U.S. EPA in connection with activities connected at the Site, and including all costs, including, but not limited to, all indirect costs, associated with U.S. EPA's performance of the Remedial Design in the event that Performing Respondents fail to complete the Remedial Design in compliance with the terms of this Consent Order.

XXIII. REIMBURSEMENT OF RESPONSE COSTS

A. At the end of each calendar year after the effective date of this Consent Order, U.S. EPA will provide the Performing Respondents with a summary of all response costs, including oversight costs, in an Itemized Cost Summary. Oversight costs shall include, but not be limited to, all indirect costs incurred by U.S. EPA with respect to this Consent Order during such year, including, but not limited to, the costs incurred by the U.S. EPA in having a qualified person oversee the conduct of all work performed under this Consent Order. Upon request by the Performing Respondents, U.S. EPA shall provide copies of all contractor progress reports and similar available documentation of contractor activities for the billing period, to the extent releasable under 40 C.F.R Part 2, including any audit or similar reports regarding contractors or laboratories used by U.S. EPA in connection with this Consent Order. Within sixty (60) days of receipt of any such summary, the Performing Respondents shall pay to U.S. EPA (or into escrow under Paragraph D below) the total sum of their response costs incurred during such calendar

year. Failure of the U.S. EPA to submit any such summary within the period specified shall not waive the Performing Respondents' liability for any such oversight costs.

B. Payment to the U.S. EPA for oversight costs incurred by the U.S. EPA shall be made by certified or cashier's check or money order payable to the order of the Hazardous Substances Superfund and referencing the Site name and state as well as the following identification number: 05JB. Such payment shall be remitted to:

U.S. Environmental Protection Agency, Region 5
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Copies of the transmittal letter and check for each payment to the U.S. EPA shall be provided at the time of such payment to:

U.S. Environmental Protection Agency, Region 5,
Office of Regional Counsel (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604
Attn: Susan M. Tennenbaum

C. Nothing in this Consent Order waives, or shall be construed to waive, the right of U.S. EPA or the United States to bring an action against the Respondents for recovery of any future costs incurred by U.S. EPA or the United States in connection with any response activities conducted or to be conducted at the Site, other than those response activities completed pursuant to this Consent Order to the satisfaction and approval of the U.S. EPA.

D. The Performing Respondents agree to limit any disputes concerning response costs payable under this Consent Order to accounting errors and the inclusion of costs that are outside the scope of this Consent Order or inconsistent with the NCP. With regard to disputed costs sought by U.S. EPA, the Performing Respondents shall pay a sum equivalent to that of the

disputed costs into an escrow account pending the resolution of such a dispute. In any proceeding concerning disputed costs, the Performing Respondents shall bear the burden of establishing that costs assessed by U.S. EPA are attributable to an accounting error or include costs that are outside the scope of this Consent Order or inconsistent with the NCP. Interest shall begin to accrue on the unpaid balance of disputed U.S. EPA costs found to be payable on the day following the date the payment was originally due, at a rate established by the Department of Treasury for such payments.

XXIV. INDEMNIFICATION OF THE UNITED STATES

A. The Respondents agree to indemnify and save and hold the United States Government and its officers, agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondents, their officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. This indemnification does not include any claims or causes of action arising from, or on account of, acts or omissions of the United States Government or its officers, agencies, departments, agents, and employees, or acts or omissions that occur at the direction of the United States Government.

B. U.S. EPA is not a party to any contract involving the Respondents at the Site.

XXV. LIABILITY INSURANCE

Prior to the commencement of any on-Site Work under this Consent Order, the Performing Respondents shall ensure that the contractor or subcontractor performing such Work maintains Comprehensive General Liability insurance in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million. At least seven (7) days prior to the commencement of any Work under this Consent Order, the Performing Respondents shall certify

to the U.S. EPA that the required insurance has been obtained by the contractor or subcontractor performing that Work. The Performing Respondents shall provide the U.S. EPA with current copies of each insurance policy throughout the duration of the Work performed under this Consent Order.

XXVI. EFFECTIVE DATE OF CONSENT ORDER

This Consent Order shall become effective five (5) days following facsimile transmission to the Respondents' representatives, as designated in Section IX (Addresses for all Correspondence), of the signature page herein for the Director of the Superfund Division, U.S. EPA, Region 5.

XXVII. MODIFICATION OF CONSENT ORDER

In addition to the procedures set forth in Sections X (Additional Work), XIII (Project Coordinators), XVI (Timeliness of Performance), and XVIII (Dispute Resolution) of this Consent Order, this Consent Order may be modified by mutual agreement of the Parties. Any modification of this Consent Order shall be in writing, signed by the Parties, and shall have an effective date five (5) days following signature by U.S. EPA, in accordance with Section XXVI (Effective Date of Consent Order).

XXVIII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon receipt by the Respondents of written notice from the U.S. EPA that the Respondents have demonstrated that all of the terms of this Consent Order, including payment of all oversight costs, completion of any additional work, modifications or amendments, but excluding record preservation pursuant to Section XIX, have been completed in accordance with the terms hereof to the satisfaction of U.S. EPA. Such notice shall not be unreasonably withheld.

XXIX. ADMISSIONS

Except as provided in Section I.B., nothing in this Consent Order, including the Attachments hereto, is intended by the Parties to be, nor shall it be, an admission of facts or law, an estoppel or a waiver of defenses by the Respondents for any purpose. Participation in this Consent Order by the Respondents is not intended by the Parties to be, and shall not be, an admission of any fact or opinion developed by the Contractor, U.S. EPA, or any other person or entity in the completion of the Work.

XXX. PRECEDENCE OF CONSENT ORDER

In the event that a conflict arises among the terms and conditions of this Consent Order and those of the RD Work Plan, this Consent Order shall govern and the terms and conditions hereunder shall determine the Parties' rights and responsibilities.

IT IS SO AGREED:

BY Respondents:

Name (Signature)

Date

Name (Printed or typed)

Title

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

BY Respondents:

Name (Signature)

Date

Name (Printed or typed)

Title

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

Name (Signature)

6-15-01

Date

ROBERT N. GENTILE

Name (Printed or typed)

V.P. - LAW

Title

GENERAL MOTORS CORPORATION

Name (Signature)

Date

Name (Printed or typed)

Title

NORTH SHORE GAS COMPANY

Name (Signature)

Date

Name (Printed or typed)

Title

GENERAL MOTORS CORPORATION

Name (Signature)

6/13/01

Date

Charles L. Thompson

Name (Printed or typed)

Vice President - Operations

Title

NORTH SHORE GAS COMPANY

Name (Signature)

Date

Name (Printed or typed)

Title

OUTBOARD MARINE CORPORATION

Name (Signature)

JUNE 15, 2001
Date

DON A. SCHIEMANN
Name (Printed or typed)

ATTORNEY
Title

GENERAL MOTORS CORPORATION

Name (Signature)

6/13/01
Date

Charles L. Thompson
Name (Printed or typed)

Vice President - Operations
Title

NORTH SHORE GAS COMPANY

Name (Signature)

Date

Name (Printed or typed)

Title

OUTBOARD MARINE CORPORATION

Name (Signature)

Date

Name (Printed or typed)

Title

NORTH SHORE GAS COMPANY

Name (Signature)

Date

Name (Printed or typed)

Title

OUTBOARD MARINE CORPORATION

Name (Signature)

Date

June 20, 2001

KENNETH W LARSEN

Name (Printed or typed)

Vice President

Title

LARSEN MARINE SERVICE, INC.

OUTBOARD MARINE CORPORATION

Name (Signature)

Date

Robert S. Romano

Name (Printed or typed)

Vice President

Title

LARSEN MARINE SERVICE, INC.

IT IS SO ORDERED AND AGREED:

BY

William E. Muno

Director

Superfund Division

U.S. Environmental Protection Agency

Date

7/2/01

Administrative Order on Consent for Remedial Design
Waukegan Coke Plant Operable Unit of the OMC Site
U.S. EPA Docket No. V-W-01-C-451

LIST OF ATTACHMENTS

| | |
|-----------------------|---|
| ATTACHMENT I | RECORD OF DECISION |
| ATTACHMENT II | SCOPE OF WORK |
| ATTACHMENT III | DISTRIBUTION LIST FOR STEERING COMMITTEE FOR REMEDIAL DESIGN |